ORDINANCE 94-09

TO AMEND THE BLOOMINGTON ZONING MAPS FROM RS/PUD to RL/PUD AND GRANT OUTLINE PLAN APPROVAL
Re: 3630 and 3710 E. 10th Street
(Don Mitchell, Petitioner)

WHEREAS, the Common Council passed a Zoning Ordinance amendment and adopted new incorporated zoning maps on June 7, 1978 which are now incorporated in Title 20 of the Bloomington Municipal Code; and

WHEREAS, the Plan Commission has considered this case, RL/PUD-5-94 and recommended that the petitioner, Don Mitchell, be granted an amendment to the Bloomington zoning maps, and outline plan approval and request that the Common Council consider his petition;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. Through the authority of IC 36-7-4 and pursuant to Chapter 20.13 of the Bloomington Municipal Code, that an outline plan be approved and the zoning be changed from RS/PUD to RL/PUD for the property located at 3630 and 3710 E. 10th St. The property is further described as follows:

A part of the northeast quarter and a part of the southeast quarter of Section 35, Township 9 North, Range 1 West, and being more particularly described as follows: **BEGINNING** at the northwest corner of the southeast quarter of said section 35; and in the center line of State Highway 45; thence running north 89 degrees east over and along the center line of said Highway for a distance of 171.5 feet; thence running north 84 degrees east and continuing over the center line of said highway for a distance of 75.75 feet; thence running north 75 degrees - 30 minutes east and still over and along the center line of State Highway 45 for a distance of 130 feet; thence running south for a distance of 1110 feet; more or less, and to the north right-of-way line of the Illinois Central Railroad right-of-way; thence running north 78 degrees - 30 minutes west over and along the north right-of-way line of the Illinois Central Railroad for a distance of 385 feet, thence running north for a distance of 992 feet and to the place of beginning. Containing in all 8.95 acres, more or less.

AND,

A part of the Northeast quarter and a part of the Southeast quarter of Section 35, Township 9 North, Range 1 West, Monroe County, Indiana, described as follows: **BEGINNING** at a point that is 1068.75 feet south and 377.26 feet east of the northwest corner of the southeast quarter of said Section 35, thence running north a distance of 1110 feet and to the center line of Dixie Highway Number 45; thence running north 75 degrees east over and along the center line of State Highway 45 for a distance of 100 feet; thence running north 76 degrees 30 minutes east and continuing over and along the center line of said State Highway 45 a distance of 100 feet; thence running north 78 degrees east over and along the center line of State Highway 45 for a distance of 40 feet; thence running south line 1 degree 30 minutes west for a distance of 1212 feet and to the north right-of-way line of the I.C.R.R.; thence running north 78 degrees 30 minutes west over and along the said north right-of-way line of the said I.C.R.R. for a distance of 240 feet and to the place of beginning.

SECTION II. The Outline Plan shall be attached hereto and made a part thereof.

SECTION III. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 4th day of May, 1994.

Jim Sherman
JIM SHERMAN, President
Bloomington Common Council

ATTEST:
Patricia Williams
PATRICIA WILLIAMS, Clerk
City of Bloomington

PRESENTED by me to Mayor of the City of Bloomington, Monroe County, Indiana, upon this 5th day of May, 1994.

Patricia Williams
PATRICIA WILLIAMS, Clerk
City of Bloomington

SIGNED AND APPROVED by me upon this 5th day of May, 1994.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This ordinance rezones from RS/PUD to RL/PUD approximately 15 acres of property located at 3630 and 3710 E. 10th Street and approves an outline plan for a retirement community.

Signed copy to
Planning
Petitioner

****ORDINANCE CERTIFICATION****

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 94-09 is a true and complete copy of Plan Commission Case Number RL/PUD-5-94 which was given a recommendation of approval by a vote of 7 Ayes, 2 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on April 4, 1994.

Timothy A. Mueller

Date: April 5, 1994

Tim Mueller, Secretary
Plan Commission

Received by the Common Council Office this 5th day of April,

Patricia Williams

Patricia Williams, City Clerk

Appropriation Ordinance #_____ Fiscal Impact Statement Ordinance #_____ Resolution #_____

Type of Legislation:

Appropriation	End of Program	Penal Ordinance
Budget Transfer	New Program	Grant Approval
Salary Change	Bonding	Administrative Change
Zoning Change	Investments	Short-Term Borrowing
New Fees	Annexation	Other_____

If the legislation directly affects City funds, the following must be completed by the City Controller:

Cause of Request:

Planned Expenditure_____ Emergency_____
Unforseen Need _____ Other_____

Funds Affected by Request:

Fund(s) Affected		
Fund Balance as of January 1	$	$
Revenue to Date		
Revenue Expected for Rest of year		
Appropriations to Date		
Unappropriated Balance		
Effect of Proposed Legislation (+/-)		
Projected Balance	$	$

Signature of Controller_____

Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues? Yes_____ No_____

If the legislation will not have a major fiscal impact, explain briefly the reason for your conclusion.

If the legislation will have a major fiscal impact, explain briefly what the effect on City costs and revenues will be and include factors which could lead to significant additional expenditures in the future. Be as specific as possible. (Continue on second sheet if necessary.)

MEMO

To: Common Council
From: Planning Department
Petitioner: Don Mitchell
Location: 3630 & 3710 E. 10th Street
Date: April 5, 1994

On April 4, 1994 the Bloomington Plan Commission approved a rezone from RS/PUD to RL/PUD and outline plan approval of approximately 15 acres to allow a retirement community to be developed on this parcel. This site is an existing PUD located between Woodbridge I and the Grandview subdivision on the south side of E. 10th Street.

The approved proposal granted a total of 210 units plus a 40 bed assisted unit. The density is now 14 units per acre which is within the Growth Policies Plan recommendation. The plan designates this area as "high density residential". The plan also calls for the softening of this area to the adjacent properties. A sixty foot landscaped buffer will be placed adjacent to the single family homes.

The main buildings are three stories in height. The bungalows will be one story in height and have garages. All lighting in the development will be down lighting to ensure that it does not bleed into the surrounding neighborhoods. A walking path circles the property. The swimming pool will also be retained for the use of the residents for therapy and exercise.

The petitioner has consulted with an attorney who assures him that the property can be deed restricted to residents over the age of 55 years. Please refer to the attached memo from the City Legal Department.

It is also noted that this property is located in the Griffy watershed. Storm water runoff quality mitigation on the order of the Gentry proposal is possible and will be an element of development plans.

Approval of this petition was granted with the following conditions:

1) Engineered water run-off quality mitigation must be incorporated into development plans to Plan Commission satisfaction. This includes redundant measures such as vegetative filters, settlement ponds, and peat-sand filters.

2) Residential use of this PUD is limited to a retirement type community to residents 55 years of age or older.

3) A recorded commitment (some sort of recorded legal document) with the effect that the retirement housing limitation be drafted and signed by the petitioner to staff satisfaction.

4) One story buildings only be allowed on the east and south frontages of the property bordering Grandview and Park Ridge neighborhoods.

Voting Record: approved 7:2

INTERDEPARTMENTAL MEMORANDUM

City of Bloomington Legal Department

TO: Tim Mueller, Planning

FROM: Michael Flory, Legal

DATE: 4 April 1994

RE: Enforcement of an age condition placed on a PUD

ISSUE

In approving a rezone from RS/PUD to RL/PUD, may the City impose and enforce a condition requiring that the property be maintained as housing for the elderly?

DISCUSSION

I am confident that the City may impose and enforce reasonable restrictions on property as conditions to approval of a rezoning. The specific condition at issue, requirement that property be maintained as housing for the elderly, is in conformance with the policy established by Congress to recognize and meet the special housing needs of the elderly. It is a general application of the City's police powers to protect the health and safety of the citizens, and also serves the legitimate zoning interest of assuring that property in the vicinity will not be materially and permanently injured by the rezoning. I see nothing in this specific proposal that would not be permissible under the broad powers granted to a municipality's legislative body to allow planned unit development (I.C. § 36-7-4-713), or under our own Municipal Code.

The City's position is further strengthened by the fact that the proposal originated with the petitioner, and was not imposed by the City--though a City-originated proposal would in no way be fatal to our ability to impose and enforce. Though there is no Indiana case law on point, there is Indiana case law upholding the right of a BZA to place special conditions on the granting of a special exception. Steuben County v. National Serv-All Inc., 556 N.E. 2d 1354 (Ind.App., 1990). This case indicates the willingness of Indiana courts to uphold conditions placed on developers seeking modifications to a municipality's zoning maps.

In summary, I am confident the City can impose and enforce this specific condition on this property before granting rezoning. The record established before the Plan Commission and the Common Council may well be sufficient, but I will also check into the possible use of some recordable instrument--possibly covenants placed on the property--to make sure there are no problems with

notice to future purchasers.

RMF:pc

pudcond1.mem

April 4, 1994

To: Tim Mueller

From: T. Micuda, K. Komisarcik, G. Heise,
M. Wedekind, P. Werner

Subj: RL/PUD-5-94 Don Mitchell 3630 E. 10th St. & 3710 E. 10th St.

Our comments regarding environmental issues were addressed at the Plan Commission meeting of February 21. For reference, here is a copy of our report for that meeting.

After inspecting the site, the Environmental Commission has the following comments:

1. The reduction of Building T's footprint and the relocation of one of the site's parking areas increases the number of trees saved by seven. By laying out the path to avoid specimen trees, another four trees on the site plan would become preservable. The Environmental Commission supports these design changes.

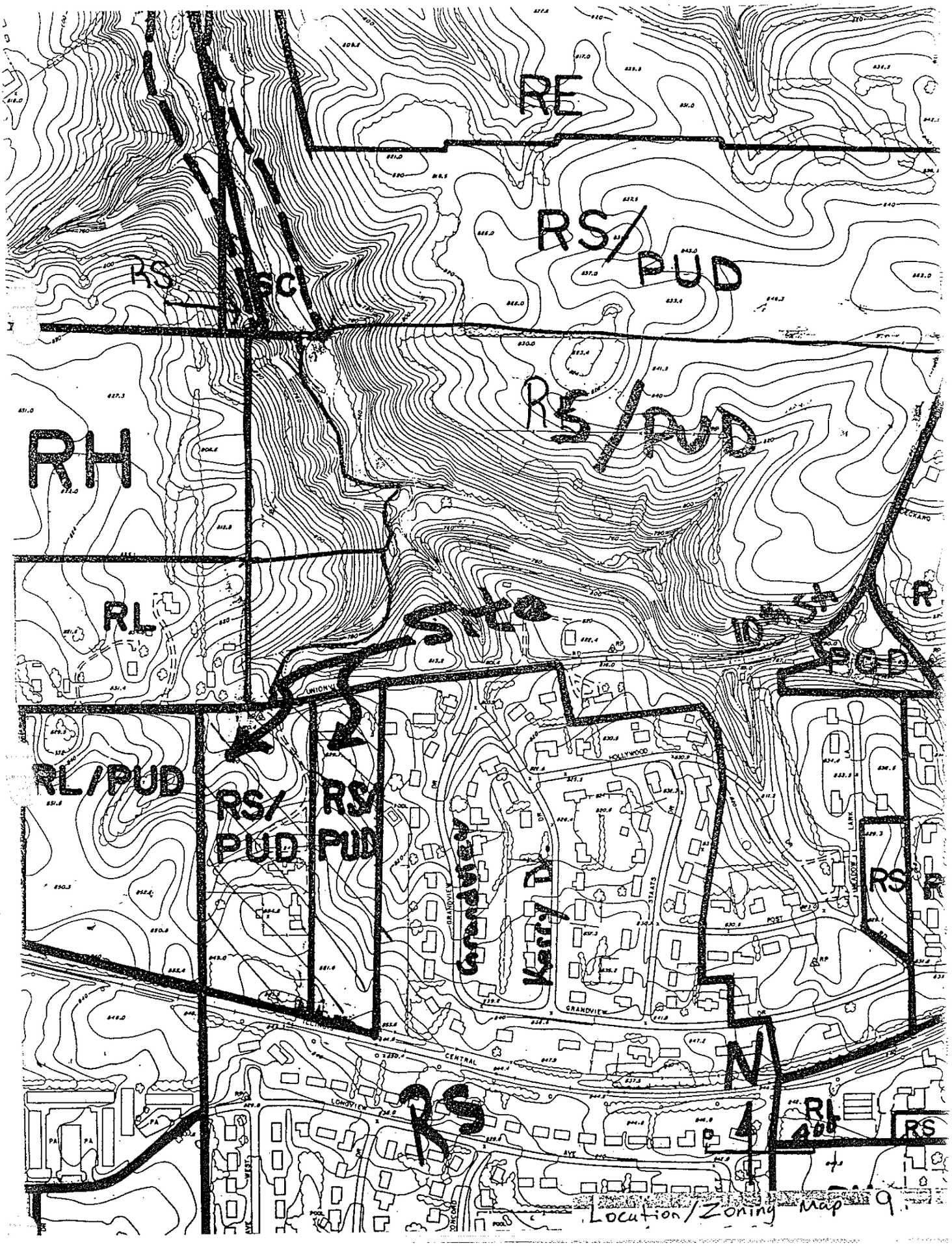
2. The petitioner has agreed to consider transplanting specimen trees that lie in proposed building areas to areas of the site that are open. In addition, the petitioner seems willing to allow EC members to spot additional trees on the site. If this second measure is adopted, approximately 20 to 25 trees could potentially be preserved.

3. The Environmental Commission supports the petitioner's proposal to pipe storm water from the eastern detention pond into the wet detention pond on the northern portion of the site. Given the concerns expressed by the Grandview neighborhood about flooding, it is important that the increased density of development on this site be mitigated by the retention and conveyence of storm water away from the neighborhood.

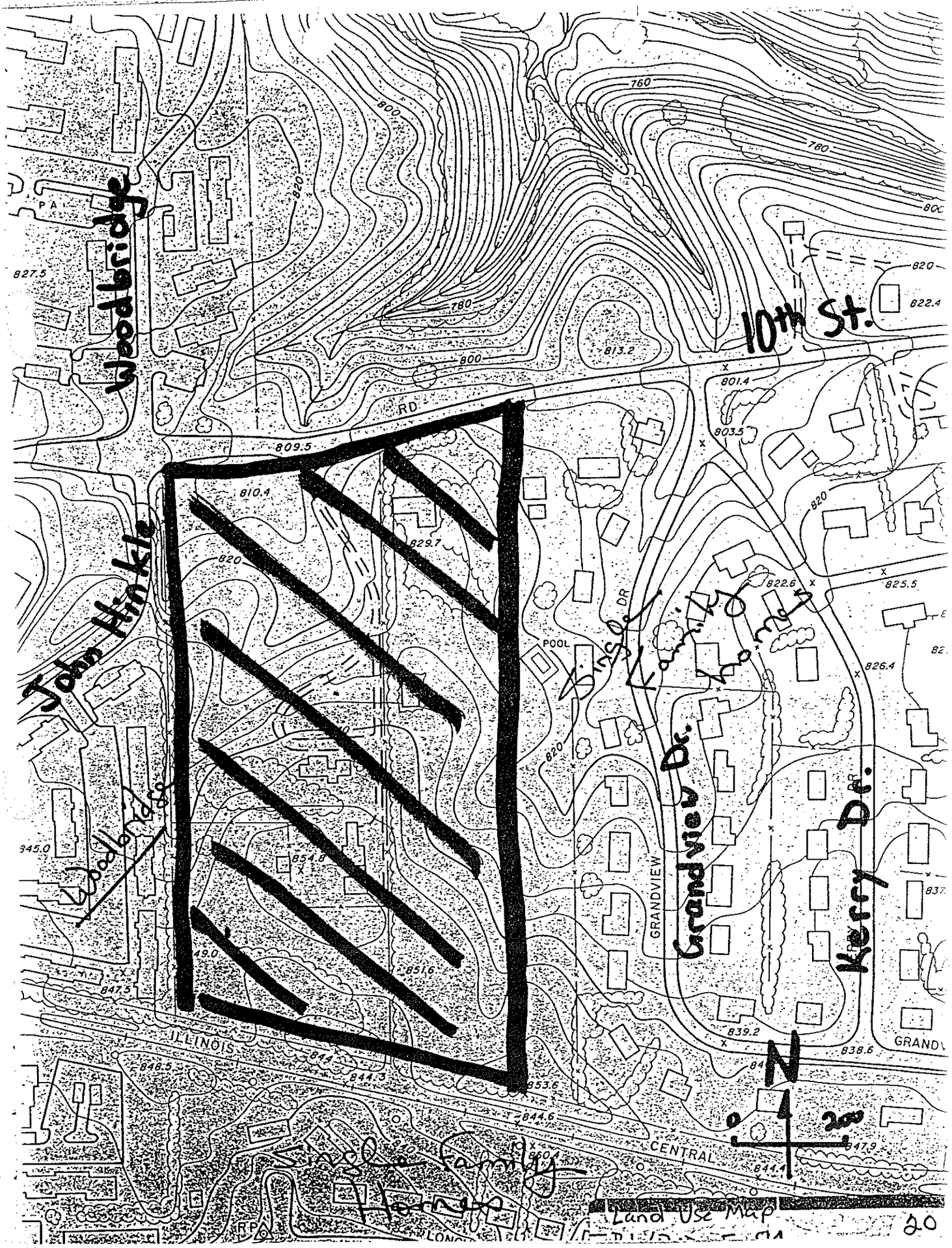
4. At development plan stage, a plan for long-term maintainance of the wet detention pond needs to be worked out. The nearby Tamarron subdivision was approved by the 1991 Plan Commission contingent on, among other things, regular maintenance of its wet detention pond. A plan needs to be worked out that considers inspections, possible water testing, and sediment removal/pond drainage. The planting of some wetlands vegetation in the pond area should also be considered.

5. The Environmental Commission supports the drop in density from 15.6 units/acre to 14 units/acre. This new number falls within the Master Plan guidelines for this area. The Plan Commission may still want to consider whether this particular site is conducive to this level of land use. The site's drainage problems, amount of vegetation cover, and watershed location may indicate that it is not.

cc. Rod Young

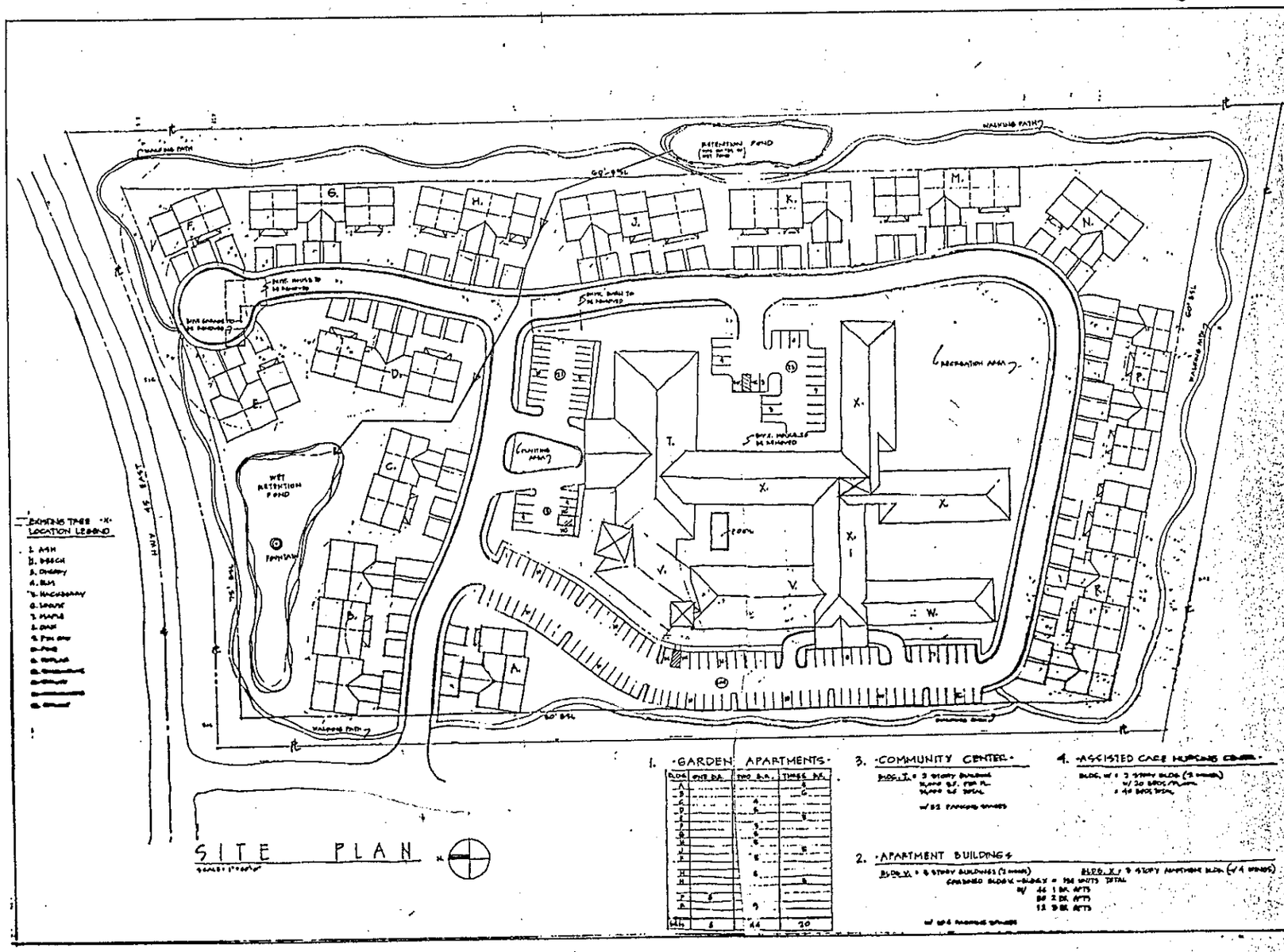


Location/Zoning Map 9



Land Use Map

20



N
11
Revised Site Plan
RW/PUD-5-94
PROPOSED
EVERGREEN COMMUNITY
EAST 10TH STREET/HWY 45 EAST
BLOOMINGTON
INDIANA
SITE PLAN
EXISTING TREE LOCATION LEGEND
1. ASH
2. BEECH
3. DOGGY
4. ELM
5. HACKBERRY
6. LOCUST
7. MAPLE
8. OAK
9. PIN OAK
RETENTION POND
WALKING PATH
WET RETENTION POND
FOUNTAIN
RECREATION AREA
PLANTING AREA
POOL
60' BSL
75' BSL
HWY 45 EAST
1. GARDEN APARTMENTS
3. COMMUNITY CENTER
4. ASSISTED CARE NURSING CENTER
2. APARTMENT BUILDINGS

BYNUM FANYO & ASSOCIATES, INC.

ARCHITECTURE
CIVIL ENGINEERING
PLANNING

February 10, 1994

City of Bloomington
Plan Commission
PO Box 100
Bloomington, Indiana 47402

RE: Don Mitchell East 10th Development

Dear Plan Commission Members:

After working with the staff on the questions raised at our first hearing we have made the following modifications to our petition.

1. The storm water drainage from the East retention pond will be directed to the North and not allowed to flow into the Grandview Subdivision. This will eliminate approximately 6 acres that is currently flowing into their back yards and contributing to the existing flooding situation.
2. We have reduced the size of the administration building by 6000 square feet. This will enable the existing trees to the East of the existing home to be preserved. During development plan we will adhere to the Environmental Commissions concerns regarding the walking path's conflicts with the trees, we will reconfigure the 23 space parking lot to avoid the trees in that area, and we will use a tree spade to transplant acceptable specimens to undisturbed locations around our site.
3. We have eliminated the fourth story on the building labeled X to a 3 story configuration. This has eliminated 24 units from the project. We have also reduced the number of 3-bedroom apartments from 18 to 12. The revised density of the project, exclusive of the 40 bed assisted care building is now 14 unit/acre.
4. On advise of our attorney we have discovered that we can deed restrict this development and we proposed to restrict residences to 55 years of age or older.

700 NORTH WALNUT STREET BLOOMINGTON, INDIANA 47404 812-332-8030

5. As shown on the plan all units along the Grandview Subdivision are one story garden units. All site lighting will be designed to be down lighting so that adjoining properties are not disturbed by our project.

We believe this addresses the questions we heard at the first hearing and hope you can recommend approval of our petition.

Very truly yours,

BYNUM FANYO & ASSOCIATES, INC.

Jeffrey S. Fanyo, PE

xc: Don Mitchell
Tim Ellis
BFA File #409376

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BLOOMINGTON PLAN COMMISSION
MR. RODNEY YOUNG PRES.

JAN 10, 1994

RECEIVED
JAN 12 1994
THE PLANNING DEPARTMENT

Dear Mr. Young:

I am submitting to you, a plan to consider for rezoning of property lacated at 3630 E. 10th, & 3710 E. 10th.
This property is presently zoned RS PUD.
I am requesting consideration to expand this zoning to RL PUD, to accomodate a Retirement Community, consisting of 2 & 3 bedroom Garden units, and 1 & 2 bedroom apartment units, with a Community Center with food and limited health care, recreational and rehab facilities.
This complex would also include, for future needs, the addition of a facility for extended care, or assisted living.

This project, would be similar in nature, to the MEADOWOOD COMMUNITY.
I respectfully request consideration of this proposal by the Plan Commission.

Sincerely:

Don Mitchell

Don Mitchell

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